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**STATEMENT OF ARGUMENTS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

*Claims 22, 25, 29, 30, 37-39 and 42 are not unpatentable under 35 U.S.C. §103(a) over German Patent Publication DE 196 22 882 (DE '882) in view of German Patent Publication DE 196 47 567 (DE '567).*

With reference to the Office Action, all of the claims are rejected over DE '882 in view of DE '567 or also in view of an additional secondary reference. Appellant maintains that these rejections are misplaced. The independent claims reference the dependency of the thermal conductivity value of the heat damping layer on the pressure in the capsule. The specification describes that upon application of an electric current to the electrical heating means, the capsule is heated, which has the effect that the hydrogen previously bound in the metal hydride grid is released. The hydrogen thus released then diffuses in the entire glass fiber core of the heat damping layer and thereby increases the internal pressure of the capsule. The specification describes the pressure increase from about 0.01 mbar to about 50 mbar, an order of magnitude of 5,000 times. See page 4, lines 18-23. The specification further describes that as a result of the increase in the internal pressure and as a consequence of the release of the hydrogen in the capsule, its k-value also increases, i.e., the thermal conductivity of the capsule or the entire heat damping layer.

Cooling of the capsule has the opposite effect where the free hydrogen forms a chemical compound with the metal hydride grid and is thereby resorbed. The specification describes that “this has the consequence of the pressure in the capsule of the variable heat damping layer drops and as a result the thermal conductivity of the capsule or the entire heat damping layer is reduced.” Moreover, the specification describes that as a result of the pressure reduction in the

capsule of the variable heat damping layer, its k-value also decreases, i.e., the thermal conductivity of the capsule or the entire heat damping layer. See page 4, line 25 – page 5, line 4. It is thus clear that the thermal conductivity value of the heat damping layer is dependent on the pressure in the capsule. The independent claims were previously amended to more clearly reference this dependency.

In contrast with this feature of the invention, DE ‘567 provides that the heat conductivity of the heat insulation material is not dependent, or only slightly so, upon the gas pressure in the vacuum heat insulation panel. See the English-language Abstract. Moreover, DE ‘567 describes that the heat insulation material is micro-porous or nano-porous. In the context of pressure dependency, the present specification distinguishes such material, describing that the heat damping layer of the dishwasher according to the invention contains an evacuable material having a comparatively coarse pore structure which changes its thermal conductivity more strongly than nano-microstructured substances in the event of small vacuum pressure fluctuations. The specification further describes that this property can be used to produce the variable heat damping layer of the invention. See, page 3, lines 28-32.

Appellant thus submits that the DE ‘882 and DE ‘567 combination falls short of the invention defined in the independent claims and that the rejections are misplaced.

In the Response to Arguments section of the Examiner’s Answer, in direct contrast with the specific teachings in DE ‘567, the Examiner contends that “note that the thermal conductivity value of the heat conductivity insulation panel is thereby dependent on the pressure of the capsule because DE ‘567 clearly shows that when the pressure increases, the thermal conductivity value also increases,” referring to page 2, lines 16-20 of a machine-generated translation. In describing existing technology, DE ‘567 references thermal conductivity of

evacuated insulation from woven glass fibers. With the prior art woven glass fibers, with increasing gas pressure of hydrogen, thermal conductivity is increased. In describing the invention, however, DE '567 provides that "the thermal conductivity of the insulation of the getter material may show [reduced insulation] in contrast to the thermal conductivity of the fill material in the panel with little or no dependence on gas pressure."

With regard to the dependent claims, Appellant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim and also because they recite additional patentable subject matter. The additional secondary references do not overcome the deficiencies noted with regard to DE '882 and DE '567.

In addition, claim 40 recites that the dishwasher includes a sound-damping layer surrounding the washing container, where the heat damping layer is disposed between the sound-damping layer and the walls of the washing container. In this context, the Office Action cites the Tilton patent, contending that Tilton discloses a dishwasher comprising a sound damping layer surrounding the washing container. Appellant submits that those of ordinary skill in the art would not be led to interpose a heat damping layer between a sound-damping layer and the walls of a washing container in view of DE '882, DE '567 or Tilton. Indeed, nothing in the Tilton patent suggests that a sound-damping layer would be positioned anywhere but directly adjacent the walls of the washing container. For this reason also, Appellant submits that the rejection of independent claim 40 is misplaced.